

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION**

**JAMES C. JUSTICE III;  
A & G COAL CORP.;  
CHESTNUT LAND HOLDINGS, LLC;  
BLUESTONE COAL CORPORATION;  
DYNAMIC ENERGY, INC.;  
FRONTIER COAL COMPANY;  
JUSTICE ENERGY COMPANY, INC.;  
KENTUCKY FUEL CORPORATION;  
NATIONAL COAL, LLC;  
PAY CAR MINING, INC.;  
PREMIUM COAL COMPANY,  
INCORPORATED;  
S AND H MINING, INC.;  
and  
TAMS MANAGEMENT, INC.,**

**Plaintiffs,**

**v.**

**OFFICE OF SURFACE MINING  
RECLAMATION AND ENFORCEMENT,  
UNITED STATES DEPARTMENT OF  
THE INTERIOR,**

**Defendant.**

**Case No.** 7:19cv381

**COMPLAINT FOR  
DECLARATORY JUDGMENT**

Plaintiffs, A & G Coal Corp., Bluestone Coal Corporation, Chestnut Land Holdings, LLC, Dynamic Energy, Inc., Frontier Coal Company, Justice Energy Company, Inc., Kentucky Fuel Corporation, National Coal, LLC, Pay Car Mining, Inc., Premium Coal Company, Incorporated, S and H Mining, Inc., Tams Management, Inc. and James C. Justice III, by counsel, and for their Complaint for Declaratory Judgment, respectfully state as follows:

## **I. THE PARTIES, JURISDICTION AND VENUE**

### **A. The Parties**

1. Plaintiff James C. Justice III (“Jay Justice”) is an individual residing in Roanoke, Roanoke County, Virginia. Jay Justice is the “Controller” of the “Justice Mining Entities” (as that phrase is defined below) for purposes of enforcement of surface mining reclamation and enforcement laws and regulations by the Defendant.

2. Plaintiff A & G Coal Corp. (“A & G”) is a Virginia corporation with its principal place of business in Roanoke, Virginia and doing business or having done business in Wise and Dickenson Counties, Virginia that was the subject of various assessments by the Defendant.

3. Plaintiff Chestnut Land Holdings, LLC (“Chestnut”) is a Delaware limited liability company with its principal place of business in Roanoke, Virginia and doing business or having done business in Tazewell County in Virginia that was the subject of various assessments by the Defendant.

4. Plaintiff Bluestone Coal Corporation (“Bluestone”) is a West Virginia corporation with its principal place of business in Roanoke, Virginia and doing business or having done business in West Virginia that was the subject of various assessments by the Defendant.

5. Plaintiff Dynamic Energy, Inc. (“Dynamic”) is a West Virginia corporation with its principal place of business in Roanoke, Virginia and doing business or having done business in West Virginia that was the subject of various assessments by the Defendant.

6. Plaintiff Frontier Coal Company (“Frontier”) is a Delaware corporation with its principal place of business in Roanoke, Virginia and doing business or having done business in West Virginia that was the subject of various assessments by the Defendant.

7. Plaintiff Justice Energy Company, Inc. (“Justice Energy”) is a West Virginia corporation with its principal place of business in Roanoke, Virginia and doing business or having done business in West Virginia that was the subject of various assessments by the Defendant.

8. Plaintiff Kentucky Fuel Corporation (“Kentucky Fuel”) is a Delaware corporation with its principal place of business in Roanoke, Virginia and doing business or having done business in Kentucky that was the subject of various assessments by the Defendant.

9. Plaintiff National Coal, LLC (“National Coal”) is a Tennessee limited liability company with its principal place of business in Roanoke, Virginia and doing business or having done business in Tennessee that was the subject of various assessments by the Defendant.

10. Plaintiff Pay Car Mining, Inc. (“Pay Car”) is a West Virginia corporation with its principal place of business in Roanoke, Virginia and doing business or having done business in West Virginia that was the subject of various assessments by the Defendant.

11. Plaintiff Premium Coal Company, Incorporated (“Premium”) is a Tennessee corporation with its principal place of business in Roanoke, Virginia and doing business or having done business in Tennessee that was the subject of various assessments by the Defendant.

12. Plaintiff S and H Mining, Inc. (“S & H”) is a Tennessee corporation with its principal place of business in Roanoke, Virginia and doing business or having done business in Tennessee that was the subject of various assessments by the Defendant.

13. Plaintiff Tams Management, Inc. (“Tams”) is a West Virginia corporation with its principal place of business in Roanoke, Virginia and doing business or having done business in West Virginia that was the subject of various assessments by the Defendant. (The Plaintiffs in

this action other than James C. Justice III are sometimes referred to as the “Justice Mining Entities.”)

14. Defendant, Office of Surface Mining Reclamation And Enforcement (“OSMRE”), is an administrative agency within the United States Department Of The Interior tasked with enforcement of surface mining reclamation and enforcement laws and regulations.

**B. Jurisdiction And Venue**

15. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1346 in that this is a civil action against the United States.

16. This Court has personal jurisdiction over OSMRE because the Defendant is an agency of the United States.

17. Venue is appropriate in this Court pursuant to 28 U.S.C. §1391(e)(1) because the Defendant is an agency of the United States and a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, in this District—in particular the mining or related activities of several of the Justice Mining Entities of the companies which are located in this District including, but not limited to, A & G and Chestnut, and Jay Justice individually, in this District were subject to enforcement decisions that are part of the parties’ overall settlement agreement this action seeks to enforce.

**II. FACTUAL ALLEGATIONS**

18. In the months and years leading up to April 2019, the OSMRE assessed various fines, special reclamation fees, penalties, and issued other notices and orders against the Justice Mining Entities.

19. For what is believed to be the first time ever, the OSMRE also wrongfully assessed a series of individual assessments against Jay Justice personally, allegedly relating to activities of the Justice Mining Entities.

20. By April 2019, OSMRE had asserted fines, penalties and assessments against each of the Justice Mining Entities and against Jay Justice personally. (See Exhibit A, partially redacted chart of underlying fines, penalties and assessments, attached and incorporated here by reference.)

21. In an effort to resolve the charges listed in Exhibit A in a manner that would ensure that the needed mine reclamation work was performed, while keeping the Justice Mining Entities solvent and actively in business, and while also generating and/or preserving hundreds of jobs associated with the reclamation work and the other ongoing business of the Justice Mining Entities, representatives of the parties agreed to hold a meeting in early April, 2019.

22. On April 8, 2019, Jay Justice and Tom Lusk, COO of the Justice Mining Entities, met with Michael Castle, the Field Office Director of the Knoxville and Lexington Field Offices of OSMRE, and Mark Snyder, also with OSMRE, in Knoxville. The discussions during that meeting were recounted in later correspondence from counsel for the Justice Mining Entities (attached as Exhibit B and incorporated by reference), as follows:

Jay Justice and Tom Lusk met with Mike Castle and Mark Snyder without counsel. They discussed the penalties against the companies and the individual penalties against [Jay] Justice. They also discussed the abatement of cited conditions and reclamation work. Mr. Castle emphatically emphasized that he is focused on completing the field work. Mr. Castle then explained that, because there is no ongoing operation and the companies are not obtaining any financial benefit through non-compliance, he believes he has the authority to compromise the penalty assessments. [Jay] Justice then proposed that the companies work to complete the reclamation work in lieu of the penalty assessments and that the penalty assessments be reduced by the cost of the reclamation

work. If the total penalties are not reduced below \$250,000.00 [two hundred fifty thousand dollars] by the cost of the reclamation work, [Jay] Justice proposed that the companies pay \$250,000.00 [two hundred fifty thousand dollars] over twelve months to satisfy the remaining penalty assessments. This meeting concluded with [Jay] Justice agreeing to pay the AML and special reclamation fees over twelve months.

(Exhibit B, p. 1.)

Mr. Castle and Jay Justice both agreed to the foregoing terms.

23. After lunch on the same day, the four initial conferees were joined by their respective attorneys. The following discussions were held in the presence of attorneys:

Mr. Castle indicated that the OSM wanted the penalties to be reduced by the cost of the reclamation on a dollar for dollar basis. You [John Austin, Field Solicitor in the Knoxville Field Office of the Department of the Interior] mentioned during this meeting that you [Mr. Austin] would like to have some form of collateral, or some type of guarantee, that the companies would satisfy their obligations under any agreement. We [the Justice Mining Entities] agreed to provide you with the financial documents upon your request.

(Exhibit B, p. 2.)

24. Jay Justice and Mr. Lusk met again with Mr. Castle and Mr. Snyder after the meeting with their respective attorneys, and discussed as follows:

[Jay] Justice and Mr. Castle discussed whether collateral would ultimately be necessary. Mr. Castle indicated that he would discuss this issue with [Mr. Austin] and that he did not believe collateral would be required to resolve the matter. During this meeting, it was agreed that Mr. Lusk would work with Mr. Snyder to prioritize the work in the field. [Jay] Justice agreed that he would place equipment in the field by May 1, 2019 to complete the work and he met this deadline. He also agreed to complete the work by October 31, 2019 weather permitting.

(Exhibit B, p. 2.)

Mr. Castle and Jay Justice again both agreed to the foregoing terms.

25. OSMRE consistently and clearly held out Mr. Castle as the agency's agent and representative for purposes of negotiating a settlement of the parties' disputes regarding payment of the assessments and fines levied against the Justice Mining Entities. Mr. Castle, in turn, consistently and clearly maintained that he, not the attorneys for OSMRE or the Department of the Interior, was empowered to negotiate agreements such as the one referenced above and in the attached correspondence.

26. Mr. Castle's predecessor, Earl Bandy (retired) was also always held out by OSMRE to be the authoritative and binding voice of OSMRE as it related to that agency's oversight of the Justice Mining Entities. Mr. Castle's position has always been held out as one having actual authority when it comes to the Justice Mining Entities' dealings with OSMRE.

27. Mr. Castle also expressed to Jay Justice that Mr. Castle's supervisor, Thomas Shope, Regional Manager of the Appalachian Region of OSMRE, approved the parties' agreement. The Appalachian Region of OSMRE encompasses all the states where the Plaintiffs had operations that are the subject of the parties' agreement.

28. Mr. Austin merely suggested alternative or supplemental terms to the parties. Mr. Austin's suggestions or requests were not held out by OSMRE or Mr. Castle to be essential to the parties' final agreement. Mr. Castle instead told Jay Justice not to worry about Mr. Austin's requests for information or collateral.

29. Jay Justice and the Justice Mining Entities left the three meetings held on April 8, 2019 believing an agreement had been reached as to all material terms. Mr. Lusk thereafter spent time in the field on April 15 – 18, 2019 with Mr. Snyder and agreed on the reclamation work that would be completed and a timeframe.

30. Counsel for the Justice Mining Entities wrote Mr. Austin on April 26, 2019 and invited him to request any additional financial information necessary to effectuate the parties' agreement. Following that correspondence, Mr. Austin went two weeks without requesting any financial information or requesting collateral in any form or amount.

31. In the meantime, and in reliance upon the terms of the parties' agreement reached April 8, 2019 (the "Settlement Agreement"), the Justice Mining Entities had already begun to incur significant expense in mobilizing equipment and commencing the reclamation work OSMRE had requested. Before the end of April 2019, the Plaintiff's had already commenced their performance under the Settlement Agreement, and have continued performing in accordance with that Agreement to this day.

32. Between April 8, 2019 and early May, 2019, Mr. Castle and Mr. Shope, among others with OSMRE, were copied on emails and correspondence between counsel for the parties discussing the implantation of the parties' Settlement Agreement, and at no time did any officers or representatives of OSMRE express any reservations about the finality and enforceability of the Settlement Agreement.

33. In the week of May 6, 2019, the government's attitude toward the Justice Mining Entities noticeably soured. The Mine Health and Safety Administration ("MSHA"), even though it was party to a tolling agreement with the Justice Mining Entities, brought suit against some of those entities in apparent violation of the tolling agreement, early in the week of May 6, 2019.

34. This event led to Mr. Austin contacting counsel for the Justice Mining Entities to relay his assumption that the filing of the MSHA suit meant that the Justice Mining Entities would be unable to perform their duties under the Settlement Agreement. When told that his assumption was totally unfounded and that the Justice Mining Entities still intended to abide by



the Settlement Agreement, Mr. Austin suddenly renewed his requests for collateral and financial information.

35. On or about May 12, 2019, less than one business day after the foregoing request, the Justice Mining Entities agreed to provide the requested collateral and financial information, even though they did not believe it was a prerequisite to OSMRE's performance under the terms of the Settlement Agreement.

36. On May 15, 2019, Mr. Austin wrote counsel for the Justice Mining Entities and denied the existence of any agreement to abate or otherwise reduce the fines and assessments reference in Exhibit A—a complete and unforeseeable reversal of the OSMRE's position. Instead, Mr. Austin claimed, for the very first time in the parties' discussions, that Mr. Castle had never had authority to bind OMSRE to the terms of the Settlement Agreement. (See Exhibit C, attached and incorporated here by reference.) Instead of abiding by the Settlement Agreement, Mr. Austin announced he was proceeding to instruct the Department of Justice to sue to collect the fines and assessments referenced in Exhibit A.

37. By virtue of the May 13, 2019 letter from Mr. Austin, OSMRE has entirely reneged on the Settlement Agreement. This, despite the fact that OSMRE held out Mr. Castle as having apparent and actual authority, despite the fact that the Justice Mining Entities relied to their detriment on the position adopted by Mr. Castle that there was a binding Settlement Agreement, and despite the Justice Mining Entities' partial and continuing performance of their duties and responsibilities pursuant to the Settlement Agreement, which without a doubt had to be politically driven.

38. As the Plaintiffs previously made OMSRE and its attorneys aware, preceding litigiously instead of in accordance with the Settlement Agreement harms the operations of a

dozen or so mining companies, and risks the jobs of hundreds of workers on the pending reclamation projects.

39. The abrupt turnaround by the government in its attitude toward this matter is inexplicable and raises the question whether untoward political or other pressure from sources presently unknown has been brought to bear on OMSRE, perhaps from other federal agencies or political adversaries of the Justice family. The repudiation of the Settlement Agreement may have resulted from inappropriate inter-agency influence between MSHA and OSMRE. Discovery will be necessary to establish why OMSRE so rapidly changed its position.

40. In any event, OMSRE's conduct in reneging on the Settlement Agreement creates a legitimate dispute and justiciable controversy that requires the intervention of the Court to resolve.

**COUNT I**  
**(Declaratory Judgment)**

41. Plaintiffs repeat and reallege each and every allegation set forth in the preceding Paragraphs of this Complaint as if fully set forth herein.

42. A real and justiciable controversy exists between the Plaintiffs and the Defendant regarding whether those parties entered into an enforceable Settlement Agreement.

43. Because OSMRE has stated that it intends to disregard the parties' Settlement Agreement and initiate litigation against the Plaintiffs on the underlying assessments, fees and penalties that are the subject of the Settlement Agreement, there also exists an immediacy to the need for an adjudication and declaratory judgment regarding the enforceability of the Settlement Agreement.

44. If OSMRE is permitted to litigate and otherwise pursue the underlying assessments, fees and penalties without there first being an adjudication and declaratory

judgment regarding the enforceability of the Settlement Agreement, the Plaintiffs will suffer economic and other real damages. Any suit filed by the government in contravention of the Settlement Agreement would create a false impression and arguably be defamatory in that it would cause harm to the business and personal reputations of the Plaintiffs.

45. The Plaintiffs are therefore entitled to a declaratory judgment pursuant to 28 U.S.C. 2201 that the Settlement Agreement is valid and enforceable against OSMRE and that OSMRE should take no further steps regarding the underlying assessments, fees and penalties.

WHEREFORE, the Plaintiffs respectfully request Judgment on their Complaint herein as follows:

- A. A Judgment on Count I for a declaratory judgment as outlined herein;
- B. Trial by jury on all counts so triable; and
- C. Such further relief as Plaintiffs appear entitled, in addition to the costs and disbursements of this action.

Respectfully submitted,

/s/ Aaron B. Houchens

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And

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COUNSEL FOR PLAINTIFFS

ctepld0571

# EXHIBIT A

## Justice Companies

Outstanding Debt Cases as of 3/15/2019

SubSystem ID	Permit Number	State	Entity Number	YR	QRT	Company Name	First Bill Date
O-2018400997	1101953	VA	119030	2018	4	A & G COAL CORP	2/28/2019
C-C18130157001	1102042	VA	119030			A & G COAL CORP	6/30/2018
O-2018300059	S-4013-01	WV	095019	2018	3	BLUESTONE COAL CORP	2/28/2019
O-2018400058	S-4013-01	WV	095019	2018	4	BLUESTONE COAL CORP	2/15/2019
O-2017400463	S-4013-01	WV	095019	2017	4	BLUESTONE COAL CORP	2/28/2018
O-2018100061	S-4013-01	WV	095019	2018	1	BLUESTONE COAL CORP	5/15/2018
O-2018200060	S-4013-01	WV	095019	2018	2	BLUESTONE COAL CORP	8/15/2018
O-2017200370	1102079	VA	251818	2017	2	CHESTNUT LAND HOLDINGS LLC	8/15/2017
O-2017300361	1102079	VA	251818	2017	3	CHESTNUT LAND HOLDINGS LLC	11/15/2017
O-2017400343	1102079	VA	251818	2017	4	CHESTNUT LAND HOLDINGS LLC	2/15/2018
O-2018100339	1102079	VA	251818	2018	1	CHESTNUT LAND HOLDINGS LLC	5/15/2018
A-20170241098		VA	251818	2018	1	CHESTNUT LAND HOLDINGS LLC	4/30/2018
O-2016400251	S-4020-96	WV	155098	2016	4	DYNAMIC ENERGY INC	2/15/2017
O-2017200233	S-4020-96	WV	155098	2017	2	DYNAMIC ENERGY INC	8/15/2017
O-2017300226	S-4020-96	WV	155098	2017	3	DYNAMIC ENERGY INC	11/15/2017
A-20160241095		WV	155098	2016	4	DYNAMIC ENERGY INC	3/31/2017
O-2018300265	U-4001-07	WV	246980	2018	3	FRONTIER COAL CO	2/28/2019
O-2018400259	U-4001-07	WV	246980	2018	4	FRONTIER COAL CO	2/15/2019
O-2017200297	U-4001-07	WV	246980	2017	2	FRONTIER COAL CO	8/15/2017
O-2017400276	U-4001-07	WV	246980	2017	4	FRONTIER COAL CO	2/15/2018
O-2018100271	U-4001-07	WV	246980	2018	1	FRONTIER COAL CO	5/15/2018
O-2018200270	U-4001-07	WV	246980	2018	2	FRONTIER COAL CO	8/15/2018
C-I18090000009	3241	TN	150367			JAMES JUSTICE III	2/15/2019
C-I18090000013	3143	TN	150367			JAMES JUSTICE III	3/15/2019
C-I18090000014	3143	TN	150367			JAMES JUSTICE III	3/15/2019
C-I18090000017	TN-023	TN	150367			JAMES JUSTICE III	3/15/2019
C-I18090000006	2872	TN	150367			JAMES JUSTICE III	10/31/2018
C-I18090000007	3233	TN	150367			JAMES JUSTICE III	10/31/2018
C-I18090000008	3233	TN	150367			JAMES JUSTICE III	10/31/2018
C-I18090000010	3250	TN	150367			JAMES JUSTICE III	1/15/2019
C-I18090000011	3250	TN	150367			JAMES JUSTICE III	1/15/2019
C-I18090000012	3250	TN	150367			JAMES JUSTICE III	1/15/2019
C-I18090000018	3237	TN	150367			JAMES JUSTICE III	
O-2018300206	S-72-82	WV	155032	2018	3	JUSTICE ENERGY CO INC	2/28/2019
O-2018400202	S-72-82	WV	155032	2018	4	JUSTICE ENERGY CO INC	2/15/2019
O-2018200997	S-72-82	WV	155032	2018	2	JUSTICE ENERGY CO INC	8/15/2018
A-20160241098		WV	155032	2017	1	JUSTICE ENERGY CO INC	4/15/2017
O-2018300228	898-0882	KY	156503	2018	3	KENTUCKY FUEL CORP	2/15/2019
O-2018300228	898-0883	KY	156503	2018	3	KENTUCKY FUEL CORP	2/15/2019
O-2018400223	898-0883	KY	156503	2018	4	KENTUCKY FUEL CORP	2/28/2019
O-2018400223	860-0505	KY	156503	2018	4	KENTUCKY FUEL CORP	2/28/2019
O-2018400223	898-0882	KY	156503	2018	4	KENTUCKY FUEL CORP	2/28/2019
O-2017300248	898-0775	KY	156503	2017	3	KENTUCKY FUEL CORP	11/15/2017

O-2017400239	898-0775	KY	156503	2017	4	KENTUCKY FUEL CORP	2/15/2018	
O-2018100234	898-0775	KY	156503	2018	1	KENTUCKY FUEL CORP	5/15/2018	
O-2018200233	898-0775	KY	156503	2018	2	KENTUCKY FUEL CORP	8/15/2018	
A-20170241076		KY	156503	2018	1	KENTUCKY FUEL CORP	5/15/2018	
A-20170245076		WV	156503	2018	1	KENTUCKY FUEL CORP	5/15/2018	
C-C18090171003	TN-023	TN	251162			NATIONAL COAL LLC	9/30/2018	
C-C18090171004	3250	TN	251162			NATIONAL COAL LLC	9/30/2018	
C-C18090281003	TN-020	TN	251162			NATIONAL COAL LLC	8/31/2018	
C-C18090461002	3255	TN	251162			NATIONAL COAL LLC	9/30/2018	
C-C18090461003	3256	TN	251162			NATIONAL COAL LLC	10/15/2018	
C-C18090535001	3249	TN	251162			NATIONAL COAL LLC	7/15/2018	
C-C18090535002	3249	TN	251162			NATIONAL COAL LLC	9/30/2018	
C-C18090535003	3249	TN	251162			NATIONAL COAL LLC	11/15/2018	
C-C18090560002	TN-021	TN	251162			NATIONAL COAL LLC	6/30/2018	
C-C18090560004	TN-021	TN	251162			NATIONAL COAL LLC	10/15/2018	
C-N17090461002	3255	TN	251162			NATIONAL COAL LLC	11/30/2017	
C-N18090171003	TN-023	TN	251162			NATIONAL COAL LLC	8/31/2018	
C-N18090171004	3250	TN	251162			NATIONAL COAL LLC	8/31/2018	
C-N18090281003	TN-020	TN	251162			NATIONAL COAL LLC	6/30/2018	
C-N18090461005	3256	TN	251162			NATIONAL COAL LLC	8/31/2018	
C-N18090535001	3249	TN	251162			NATIONAL COAL LLC	7/15/2018	
C-N18090535006	3249	TN	251162			NATIONAL COAL LLC	10/15/2018	
C-N18090560002	TN-021	TN	251162			NATIONAL COAL LLC	6/15/2018	
C-N18090560004	TN-021	TN	251162			NATIONAL COAL LLC	7/15/2018	
C-N18090560007	TN-021	TN	251162			NATIONAL COAL LLC	11/15/2018	
C-N18090535008	3249	TN	251162			NATIONAL COAL LLC		
O-2018300243	U-4010-98	WV	158356	2018	3	PAY CAR MINING INC	2/28/2019	
O-2018400238	U-4010-98	WV	158356	2018	4	PAY CAR MINING INC	2/15/2019	
O-2017300263	U-4010-98	WV	158356	2017	3	PAY CAR MINING INC	11/15/2017	
O-2017400254	U-4010-98	WV	158356	2017	4	PAY CAR MINING INC	2/15/2018	
O-2018100249	U-4010-98	WV	158356	2018	1	PAY CAR MINING INC	5/15/2018	
O-2018200248	U-4010-98	WV	158356	2018	2	PAY CAR MINING INC	8/15/2018	
C-N18090546004	3237	TN	036315			PREMIUM COAL CO INC	2/15/2019	
C-N18090560008	3236	TN	036315			PREMIUM COAL CO INC	2/15/2019	
C-C17090534001	3183	TN	036315			PREMIUM COAL CO INC	9/30/2018	
C-C17090546001	3237	TN	036315			PREMIUM COAL CO INC	4/15/2018	
C-C18090171001	3233	TN	036315			PREMIUM COAL CO INC	6/30/2018	
C-C18090171002	3241	TN	036315			PREMIUM COAL CO INC	7/15/2018	
C-C18090281001	3143	TN	036315			PREMIUM COAL CO INC	8/31/2018	
C-C18090281002	2872	TN	036315			PREMIUM COAL CO INC	8/31/2018	
C-C18090534001	3183	TN	036315			PREMIUM COAL CO INC	9/30/2018	
C-C18090534003	3183	TN	036315			PREMIUM COAL CO INC	11/30/2018	

C-C18090546001	3237	TN	036315			PREMIUM COAL CO INC	9/30/2018	
C-C18090560001	3236	TN	036315			PREMIUM COAL CO INC	6/30/2018	
C-C18090560003	3240	TN	036315			PREMIUM COAL CO INC	9/30/2018	
C-N17090534001	2873	TN	036315			PREMIUM COAL CO INC	11/15/2017	
C-N17090534005	3183	TN	036315			PREMIUM COAL CO INC	9/30/2018	
C-N17090546004	3237	TN	036315			PREMIUM COAL CO INC	4/15/2018	
C-N18090171001	3233	TN	036315			PREMIUM COAL CO INC	6/30/2018	
C-N18090171002	3241	TN	036315			PREMIUM COAL CO INC	6/30/2018	
C-N18090281001	3143	TN	036315			PREMIUM COAL CO INC	8/15/2018	
C-N18090281002	2872	TN	036315			PREMIUM COAL CO INC	6/30/2018	
C-N18090534004	3183	TN	036315			PREMIUM COAL CO INC	7/15/2018	
C-N18090534005	3183	TN	036315			PREMIUM COAL CO INC	8/15/2018	
C-N18090534008	3138	TN	036315			PREMIUM COAL CO INC	10/31/2018	
C-N18090546002	3237	TN	036315			PREMIUM COAL CO INC	6/30/2018	
C-N18090546003	3237	TN	036315			PREMIUM COAL CO INC	8/15/2018	
C-N18090560001	3236	TN	036315			PREMIUM COAL CO INC	6/15/2018	
C-N18090560003	3236	TN	036315			PREMIUM COAL CO INC	7/15/2018	
C-N18090560005	3240	TN	036315			PREMIUM COAL CO INC	7/15/2018	
C-N19090546001	3237	TN	036315			PREMIUM COAL CO INC		
C-C18090534002	3046	TN	039561			S & H MINING INC	11/30/2018	
C-N17090534004	2283066	TN	039561			S & H MINING INC	2/28/2018	
C-N18090534007	3046	TN	039561			S & H MINING INC	10/31/2018	
O-2017200338	S-5013-00	WV	250162	2017	2	TAMS MANAGEMENT INC	8/15/2017	
O-2017200338	S-3009-98	WV	250162	2017	2	TAMS MANAGEMENT INC	8/15/2017	
O-2017200338	S-3018-09	WV	250162	2017	2	TAMS MANAGEMENT INC	8/15/2017	
O-2017300331	S-3009-98	WV	250162	2017	3	TAMS MANAGEMENT INC	11/15/2017	
O-2017300331	S-4013-01	WV	250162	2017	3	TAMS MANAGEMENT INC	11/15/2017	
O-2017400316	S-3009-98	WV	250162	2017	4	TAMS MANAGEMENT INC	2/15/2018	
A-20170241077		WV	250162	2018	2	TAMS MANAGEMENT INC	7/31/2018	



# EXHIBIT B

LAW OFFICES  
**CAREY, SCOTT, DOUGLAS & KESSLER, PLLC**

901 CHASE TOWER  
707 VIRGINIA STREET, EAST  
P. O. BOX 913  
CHARLESTON, WV 25323

MICHAEL W. CAREY  
ROBERT E. DOUGLAS  
JOHN A. KESSLER  
S. BENJAMIN BRYANT  
DAVID R. POGUE

TELEPHONE (304) 345-1234  
TELEPHONE (304) 342-1111  
FACSIMILE (304) 342-1105

May 13, 2019

John Austin, Esquire  
United States Department of the Interior –  
Office of the Solicitor  
800 S. Gay Street, Suite 800  
Knoxville, TN 37929

Re: Justice Companies  
Outstanding OSM Assessments

Dear Mr. Austin:

I am writing to follow up on our conversation from Friday May 10, 2019 and to confirm our agreement to all material terms of a settlement of outstanding OSM liabilities as set forth in my letter of April 26, 2019. This agreement follows meetings which occurred on April 8, 2019 in Knoxville. Prior to our meeting, Jay Justice and Tom Lusk met with Mike Castle and Mark Snyder without counsel. They discussed the penalties against the companies and the individual penalties against Mr. Justice. They also discussed the abatement of cited conditions and reclamation work. Mr. Castle emphatically emphasized that he is focused on completing the field work. Mr. Castle then explained that, because there is no ongoing operation and the companies are not obtaining any financial benefit through non-compliance, he believes he has the authority to compromise the penalty assessments. Mr. Justice then proposed that the companies work to complete the reclamation work in lieu of the penalty assessments and that the penalty assessments be reduced by the cost of the reclamation work. If the total penalties are not reduced below \$250,000.00 by the cost of the reclamation work, Mr. Justice proposed that the companies pay \$250,000.00 over twelve months to satisfy the remaining penalty assessments. This meeting concluded with Mr. Justice agreeing to pay the AML and special reclamation fees over twelve months. Mr. Castle then indicated he would discuss this proposal with you and Mr. Henson and we would reconvene after lunch.

After lunch, we met with our respective clients present and I conveyed to you the offer that was memorialized in writing on April 26, 2019. During this meeting, Mr. Castle indicated that the OSM wanted the penalties to be reduced by the cost of the reclamation on a dollar for dollar basis. You mentioned during this meeting that you would like to have some form of collateral, or some type of guarantee, that the companies would satisfy their obligations under any agreement. We agreed to provide you with the financial documents upon your request.

After our meeting concluded, Mr. Justice and Mr. Lusk met again with Mr. Castle and Mr. Snyder. I understand that Mr. Justice and Mr. Castle discussed whether collateral would ultimately be necessary. Mr. Castle indicated that he would discuss this issue with you and that he did not believe collateral would be required to resolve the matter. During this meeting, it was agreed that Mr. Lusk would work with Mr. Snyder to prioritize the work in the field. Mr. Justice agreed that he would place equipment in the field by May 1, 2019 to complete the work and he met this deadline. He also agreed to complete the work by October 31, 2019 weather permitting. At this point, my clients believed an agreement had been reached as to all material terms. Mr. Lusk thereafter spent time in the field on April 15-18, 2019 with Mr. Snyder and they agreed on the work that would be completed and a timeframe. My letter of April 26, 2019 followed and concluded by inviting you to request any additional information necessary.

Following my April 26, 2019, correspondence, you never requested any specific financial information and never requested collateral in any specific form or any specific amount. We next discussed this matter on May 10, 2019, at which time I asked what was necessary to finalize the agreement. In response, you said that the companies must provide financial statements and collateral to secure payment of the penalty assessments (or reclamation with costs up to the amount of the penalty assessments). The timing of this request is surprising considering my April 26, 2019 correspondence offered to provide additional information upon request. We did not hear anything from you in this regard until May 10, 2019. Now it is our understanding that the Department of Justice is involved and is preparing litigation against the companies and individuals. The timing of the involvement of the Department of Justice in this matter is likely no coincidence considering the action filed last week to collect allegedly delinquent mine safety and health assessments. This is particularly surprising considering that my clients left Knoxville on April 8 with an agreement as to all material terms and Mr. Castle and Mr. Snyder were satisfied with both the terms and the plans for the work in the field after Mr. Snyder's meeting with Mr. Lusk.

After you stated on May 10, 2019 that financial statements and collateral would be required, we worked through the weekend to meet these requests and now specifically agree to provide financial statements and collateral to secure the payment of the cost of reclamation up to the amount of the penalty assessments. The companies have recently obtained a verbal commitment from a lender that will allow the companies to provide a letter of credit in the amount of the outstanding penalties. This letter of credit will be used to secure payment of the penalty assessments (or reclamation with costs up to the amount of the penalty assessments) and will secure the payment of the \$250,000.00 penalty if the penalty assessments are not reduced to less than \$250,000.00 by the reclamation cost. We can immediately move forward with the letter of credit as soon as we have an executed agreement we can share with our lender. Additionally, I will need you to provide me all of the counterpart information from OSM so that it can be listed on the letter of credit. If still necessary, we will provide you with the most recent financial statements for the companies which the OSM contends owe penalty assessments.

The Justice family appreciates Mr. Castle's willingness to meet and work through these issues and his professionalism throughout this process. We believe this agreement will accomplish the primary goal of ensuring that the conditions on the ground comply with the law. As previously

mentioned, this agreement will allow the companies to complete the reclamation while at the same time continuing to operate and saving approximately 450 jobs.

I understand from discussions with your office last week that the filing of one or more complaints is imminent. This is of grave concern and bewilderment to my clients. We believe it is unnecessary, as we have now met every term you requested to settle this matter. If this file has been forwarded to the Department of Justice, I request that this correspondence be immediately provided to the individuals working on this matter and that they be notified we have agreed to all of the OSM's settlement demands. Additionally, please immediately provide me with their names and contact information.

Sincerely,

/s/ Michael W. Carey

Michael W. Carey

cc: Mike Castle  
John Henson, Esquire  
Tom Lusk  
James C. Justice, III

# EXHIBIT C



# United States Department of the Interior

## OFFICE OF THE SOLICITOR

Knoxville Field Office  
800 S. Gay Street, Suite 800  
Knoxville, Tennessee 37929



E-mail: [john.austin@sol.doi.gov](mailto:john.austin@sol.doi.gov)

Telephone: (865) 545-4955

**May 15, 2019**

Michael W. Carey  
Carey, Scott, Douglas & Kessler, PLLC  
P. O. BOX 913  
Charleston, WV 25323

**sent via email only**

Dear Mr. Carey:

This is in response to your letter dated May 13, 2019, and the emails that you sent as a further explanation of that letter. I acknowledged receipt of your letter by email to Chris Pence on 05-13-19 at 4:26 p.m.

I need to reiterate what you and your clients have been told: Neither OSMRE nor any of its employees nor the attorneys representing the Secretary of the Interior have the authority to settle a debt owed to the United States that exceeds \$100,000.00 without the approval of the U.S. Department of Justice (DOJ). *See* 31 U.S.C. § 9711 and 31 C.F.R. § 902.1. Therefore, notwithstanding your clients' assertion about a deal they believe they made with OSMRE, there is not nor has there been an authorized agreement with the United States to settle the monetary debts of your clients for \$250,000.00, or for any other amount.

Yesterday afternoon, a letter authorizing DOJ to file suit against the Justice Companies *et al.* on behalf of the Department of the Interior was signed and sent (the end of a process that has taken months to accomplish – the MSHA lawsuit plays no part in DOI's referral to DOJ). If your clients want to settle these cases before suit is filed, please make an offer that we can discuss with DOJ. If you decide to make an offer, we recommend that you provide collateral to guarantee the full performance of any proposed settlement.

In addition, as we explained in our face-to-face meeting in April, in order to settle these claims, we will require financial statements and any other information you can provide that will demonstrate a settlement is in the best interests of the citizens of the United States. We will also need documentation of your belief that a settlement will preserve 450 jobs.

We have suggested on more than one occasion that a showing of good faith will benefit your clients if they intend to pursue settlement. For instance, they can show good faith by continuing to abate the environmental violations that exist in Tennessee and by making good on the settlement agreement negotiated on their behalf in 2017 by Zachary Wright (copy attached).

We look forward to working out a settlement with you, your clients, and DOJ. We are standing by to answer any questions you might have.

Sincerely,

A handwritten signature in blue ink, appearing to read "John Austin", is written over a horizontal line.

JOHN AUSTIN, Field Solicitor

## CIVIL COVER SHEET

7:19cv381

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

James C. Justice III, A & G Coal Corp., Chestnut Land Holdings, LLC;  
Bluestone Coal Corp., Dynamic Energy, Inc., see attached sheet

(b) County of Residence of First Listed Plaintiff Roanoke City

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Aaron B. Houchens, Aaron B. Houchens, P.C., 111 East Main Street,  
P.O. Box 1250, Salem, Virginia 24163, (540) 389-4498,  
see attached sheet

**DEFENDANTS**

Office of Surface Mining, Reclamation and Enforcement, United  
States Department of the Interior

County of Residence of First Listed Defendant \_\_\_\_\_

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question  
(U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice <b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education <b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. Section 1346, 2201

Brief description of cause:

Declaratory Judgment to enforce Settlement Agreement

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

**DEMAND \$**

CHECK YES only if demanded in complaint:

**JURY DEMAND:** ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE N/A

DOCKET NUMBER \_\_\_\_\_

DATE

05/17/2019

SIGNATURE OF ATTORNEY OF RECORD

/s/ Aaron B. Houchens, Esq.

FOR OFFICE USE ONLY



**Continuation of Civil Cover Sheet, 1. (a) Plaintiffs**

James C. Justice III, A&G Coal Corporation., Chestnut Land Holdings LLC,  
 Bluestone Coal Corp., Dynamic Energy, Inc., Frontier Coal Company., Justice Energy Co., Inc.,  
 Kentucky Fuel Corporation, National Coal, LLC, Pay Car Mining, Inc., Premium Coal  
 Company., Inc., S & H Mining, Inc., and TAMS Management, Inc.

**Continuation of Civil Cover Sheet, 1. (c) Attorneys**

AARON B. HOUCHENS  
 AARON B. HOUCHENS, P.C.  
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 Telephone: (540) 389-4498  
 Facsimile: (540) 339-3903  
 Email: aaron@houchenslaw.com

and

RICHARD A. GETTY (*Pro Hac Vice* Admission pending)  
 C. THOMAS EZZELL (*Pro Hac Vice* Admission pending)  
 MARCEL RADOMILE (*Pro Hac Vice* Admission pending)  
 THE GETTY LAW GROUP, PLLC  
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